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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,936	08/02/2001	Madhu Rao	81862P248	8366
21186 7590 07/23/2009 SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402				
EXAMINER SURVILLO, OLEG				
ART UNIT 2442		PAPER NUMBER		
NOTIFICATION DATE 07/23/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@slwip.com
request@slwip.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 09/921,936	Applicant(s) RAO ET AL.
Examiner OLEG SURVILLO	Art Unit 2442

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-12, 14, 16, 17, 19-33, 35-51, 53-64 and 81.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Andrew Caldwell/
Supervisory Patent Examiner, Art Unit 2442

Continuation of 3. NOTE: as to proposed amendment to claims 6, 26, 42, and 58 to recite that the address registration information is sent in a data packet, wherein the data packet comprises spare bytes instead of previously recited the address registration information comprises spare bytes, this amendment would change the scope of the invention and would necessitate further consideration. Applicants argue at page 10 of remarks that "minor amendments have been made to claims 6, 14, 16, 19, 26, 35, 42, 53, and 58 to clarify the meaning of the claim language or to correct dependency, and not for reasons related to patentability". However, it is noted that "clarifying the claim language" by introducing "a data packet" changes the scope of the claim, as per claims 6, 26, 42, and 58.

Continuation of 11.: regarding claim objections, applicant's amendment has been fully considered and is sufficient. Therefore, if amendment was entered, the objection would have been withdrawn.

Regarding the rejection of claims 49-51 under 35 U.S.C. 112, first paragraph, applicant's arguments have been fully considered but they are not persuasive. Applicants argue that "the specification clearly teaches that each function relies on different structural support". However, applicants failed to rebut examiner's interpretation of means recitations in light of claims 33 and 36, which, according to examiner, provide evidence of the claimed functionality being performed, in at least one embodiment, by a sequence of computer executable instructions, such instructions being the corresponding structure for all three means. Further, applicants failed to state on record that interpretation of "a means for appending address registration information to a message" shall be limited to a switch or a router, "a means for sending the message between a router of a router network and a switch of a switch network" to a switch or a router in combination with a link, and "a means for using the address registration information to map the switch network from a local area network management system controlling the router network" to a local area network management system. Thus, examiner maintains that in at least one embodiment, a sequence of computer executable instructions, as in claims 33 and 36, provide a means for appending, a means for sending, and a means for using. Therefore, the rejection is maintained.

Regarding the rejection of claims 6, 26, 42, and 58 under 35 U.S.C. 112, second paragraph, applicant's amendment has been fully considered and is sufficient. Therefore, if amendment was entered, the rejection would have been withdrawn.

Regarding the rejection of claims 49-51 and 53-64 under 35 U.S.C. 101, applicant's arguments have been fully considered but they are not persuasive. Applicants argue that "a claimed process is surely patent-eligible under 101" and recited a test for a method claim as discussed in *In re Bilski* court decision. Applicants further recited *Ex parte ANDREAS MYKA* and *CHRISTIAN LINDHOLM*, BPAI, Appeal 2008-3874, decided May 13, 2009 which found a method claim including communication between devices as patentable subject matter. However, neither *In re Bilski* decision nor *Ex parte ANDREAS MYKA* and *CHRISTIAN LINDHOLM* decision is relevant because claim 49 is directed to a machine, i.e. thing or product, and not a process. In particular, claim 49 is directed to a system comprising means for appending, means for sending, and means for using. To the contrary, process claim consists of a series of steps or actions that are performed. Thus, the rejection is maintained.

Regarding the rejection of claims 1-12, 14, 16, 17, 19-33, 35-51, 53-64 and 81 under 35 U.S.C. 103(a), applicant's arguments have been fully considered but they are not persuasive. As to claim 1, applicants argue that "ILMI Spec, however, fails to show the above-quoted elements of claim 1 since the NMS in ILMI Spec does not use the ATM Interface MIB data or the ILMI to map the ATM devices". This argument is not persuasive because the claim fails to specify as to what constitutes "mapping" apart from broadly "accessing each router in the network of routers and each switch in the network of switches", as claimed. To that extent, the teaching of "the ATM Interface MIBs in corresponding ATM devices being already accessible and the SNMP proxy-agent relaying requests from the NMS to a corresponding ATM device" in ILMI Spec, as argued, effectively maps the ATM devices, absent further specificity as to what constitutes "mapping". Applicants' argument is further not persuasive for the reasons given in the last Office action at pages 4-5. Applicants further argue that "Hanaki fails to show the above-quoted elements of claim 1". In response to this argument, it is noted that Hanaki teaches the elements Hanaki was relied on to teach, as discussed in the last Office action at page 10.

As to any arguments not specifically addressed, they are the same as those discussed above.